

Ayer



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Renewable Forestry Services, Inc.

File: B-235627

Date: September 20, 1989

DIGEST

1. Protest alleging that solicitation for a fixed-price nonpersonal services contract is defective because it did not require the contractor to obtain commercial insurance coverage is denied, where Federal Acquisition Regulation does not require such coverage and contracting agency reasonably determined that insurance coverage was not necessary to protect the government's interest.
2. Contracting agency need not require that bidders furnish verification that they carry insurance coverage mandated by state or local law, such as workers' compensation, since compliance with state and local requirements is a matter to be resolved between the contractor and the state or local authorities.

DECISION

Renewable Forestry Services, Inc., protests the terms of invitation for bids (IFB) No. R8-3-89-8, issued by the Forest Service, U.S. Department of Agriculture, for nonpersonal services--chainsaw removal of unwanted hardwood growth around pine saplings and application of government-furnished herbicide to the stumps--on 440 acres of National Forest land. Renewable contends that the solicitation is defective because it does not (1) require the contractor to obtain commercial insurance coverage for workers' compensation, general liability, and automobile liability; (2) set out specific levels and types of insurance coverage; or (3) provide for verification of contractors' insurance coverage.

We deny the protest.

Renewable contends that contracting agencies must include provisions in fixed-price service contract solicitations, such as the one at issue here, requiring contractors to obtain commercial insurance coverage for workers' compensation, automobile liability, and general liability risks.

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As support for its position, Renewable relies on Federal Acquisition Regulation (FAR) § 28.301(b), which provides in pertinent part as follows:

"Contractors . . . are required by law and this regulation to provide insurance for certain types of perils (e.g., workers' compensation). Insurance is mandatory also when commingling of property, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the Government."

Renewable also cites FAR § 28.307-2, which sets out minimum levels of coverage for workers' compensation, automobile liability and general liability.

Renewable contends that the Forest Service must require contractors to carry workers' compensation coverage because, under state law, the government ultimately is responsible as a landowner for the compensation of forestry workers injured on its land, and thus must either assume financial responsibility or protect itself by requiring contractors to obtain insurance. Renewable also contends that FAR § 28.301(b) requires at least automobile liability and general liability coverages because government and contractor property is commingled when the contractor transports government-furnished property to and from the work sites.

The agency contends that the FAR provisions renewable cites do not require commercial insurance coverage in this case, and, moreover, that the inclusion in the IFB of FAR § 52.236-7 (permits and responsibilities), placing the burden of complying with state and local laws such as pesticide licensing and workers' compensation on the contractor, renders requirements for commercial insurance coverage unnecessary.^{1/}

As a preliminary matter, we agree with the agency's position that the first sentence of FAR § 28.301(b)--"Contractors . . . are required by law and this regulation to provide insurance for certain types of perils (e.g., workers' compensation)"--does not impose a general requirement that

^{1/} Renewable questions the agency's reliance on FAR § 52.236-7, urging that it is to be included in construction and architect and engineering contracts, not in service contracts. However, as the agency argues, while the provision is usually found in construction and demolition contracts, FAR § 37.110(e) authorizes its use in service contracts.

agencies compel all contractors to carry workers' compensation coverage regardless of applicable state law. Instead, we view it as notice to bidders that certain laws and the FAR, in certain circumstances, require contractors to carry insurance for certain types of risks--one example being workers' compensation, which is often required by state law. Similarly, FAR § 28.307-2 is not a general requirement that all federal contractors carry the listed coverages; rather, it is a statement of minimum acceptable insurance coverages when such coverage is otherwise required by the FAR.

Further, we see no basis to question the agency's determination that the current procurement does not involve "commingling of property" which makes commercial insurance "necessary for the protection of the Government" within the meaning of FAR § 28.301(b).

The agency argues that there is no commingling of government and contractor property during performance within the meaning of FAR § 28.301(b) because the solicitation clearly allocates responsibility for the government-furnished herbicide between the agency and the contractor. Under the IFB, the agency (1) maintains records of herbicide usage, (2) stores the herbicide, (3) mixes the herbicide, and (4) dispenses the herbicide in 5-gallon containers to the contractor. The contractor (1) transports the herbicide to the work site, (2) applies the herbicide, and (3) accounts for the use of the issued herbicide including return of used herbicide containers. In addition, the IFB incorporates FAR § 52.245-4, under which the contractor assumes the risk and responsibility for loss or damage to the herbicide and containers.

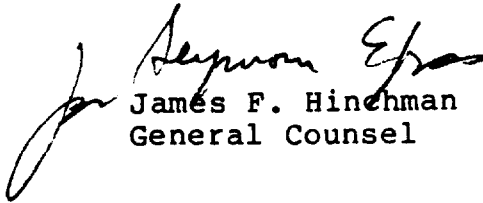
Accordingly, since the solicitation contains FAR § 52.245-4, a government property clause placing liability for loss or damage to the herbicide on the contractor; the contractor's custody and use of the property is clearly separated from the government's custody and use of the property; and nothing in the record indicates that the herbicide has such value that the contractor would not be able to compensate the government for its loss or damage, we conclude that the agency reasonably found that commercial insurance coverage need not be required under FAR § 28.301(b).

Since the agency properly determined that commercial insurance coverage is not required, we need not address the protester's arguments regarding levels and types of coverage, or the matter of which federal agency is responsible for verification of the required coverage.

Finally, we see no basis to conclude that the agency must require that bidders furnish verification that they carry the types of insurance coverage mandated by state or local

law. In general, a contractor's compliance with state and local requirements is a matter which must be resolved between the contractor and the state or local authorities, not by federal officials. See, e.g., Central Forwarding, Inc., B-222531.4, Aug. 4, 1986, 86-2 CPD ¶ 142; Lewis & Michael, Inc., B-215134, May 23, 1984, 84-1 CPD ¶ 565. If enforcement of such state or local requirements prevents a firm from performing the contract, the agency may terminate the contract for default. See Cadillac Ambulance Service, Inc., B-220857, Nov. 1, 1985, 85-2 CPD ¶ 509.

The protest is denied.


James F. Hinchman
General Counsel